The constitutional right to freedom of speech is not wholly independent of the right to freely acquire, possess and enjoy property. *Jordahl* v. *Hayda,* supra. A combination of two or more persons with intent to injure the rights of others, and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting singly, is in itself wrongful and illegal. Mr. Justice HARLAN, in *Arthur* v. *Oakes,* 11 C. C. A. 209, 63 Fed. 321, 322. In the principal case, the court proceeds upon the assumption that the ultimate purpose of the boycott, the "furtherance of the objects of its existence," prevails to the exclusion of any more immediate or direct motive, thus eliminating the question of malice present by implication of law in many of the cases cited above, and holding the legality or criminality of the acts to be the criterion. The Supreme Court of the United States, in the late case of *Aikens* v. *Wisconsin,* 195 U. S. 194, 25 Sup. Ct. 3, holds that the defense that motives are not actionable is true "in determining what a man is bound to foresee, but not necessarily true in determining the extent to which he can justify harm which he has foreseen," thus seeming to dispose of the view that there is no liability for acts unless the acts themselves are criminal.

WATERS—RIGHTS TO SUBTERRANEAN PERCOLATING WATERS.—Plaintiff owned land upon which was a spring, and defendant owned land adjoining, on which it bored a well for the purpose of supplying the inhabitants of the city with water. The result was the drying up of plaintiff's spring. *Held, damnum absque injuria.* Defendant could appropriate water percolating under its land even for the purpose of carrying it away and selling it. *Meeker* v. *Mayor, etc., of City of East Orange* (1908), — N. J. L. —, 70 Atl. 360.

This case is in accord with the leading English case, with earlier cases in this country, and with previous New Jersey holdings, but contrary to the present trend of authority. The following support the ruling in the case under consideration: *Chasemore* v. *Richards,* 7 H. of L. 349; *Ocean Grove* v. *Asbury Park,* 40 N. J. Eq. 447; *Rooth* v. *Driscoll,* 20 Conn. 533; *Delhi* v. *Youmans,* 45 N. Y. 362; *Chase* v. *Silverstone,* 62 Me. 175; *Hanson* v. *McCue,* 42 Cal. 303. A number of courts, while recognizing that the owner of land has a property right in subterranean percolating waters, forbid him to exercise his right where to do so would injure another and he is acting from malice. *Greenleaf* v. *Francis,* 18 Pick. 117; *Wheatley* v. *Bough,* 25 Pa. St. 528; *Haldeman et al.* v. *Bruckhart,* 45 Pa. St. 514; see 3 MICH. L. REV. 491. Still other cases hold that subterranean percolating waters are the property of him through whose land they flow, the same as the stones upon the land, and the owner may assert his right of property regardless of the prompting motive. *Chatfield* v. *Wilson,* 28 Vt. 49; *Frazier* v. *Brown,* 12 Ohio St. 294. Of the two later rules this appears to be the more logical, although numerically weaker. Some of the older cases in the United States and a majority of the recent cases incline to the reasonable use doctrine, which recognizes a right in the owner of land to appropriate waters percolating under his land *for his own use,* but imposes the old maxim, "*sic utere tuo ut*

*alienum non laedas.*" *Bassett* v. *Manufacturing Co.*, 43 N. H. 569; *Swett* v. *Cutts*, 50 N. H. 439; *Stillwater Water Co.* v. *Farmer*, 89 Minn. 58; *Forbell* v. *City of New York* (1900), 164 N. Y. 522; *Katz* v. *Walkinshaw* (1903), 141 Cal. 116; *Gagnon* v. *French Lick Spring Hotel Company* (1904), 163 Ind. 687; *Erickson* v. *Crookston Waterworks, P. & L. Co.* (1907), 100 Minn. 481, 6 L. R. A. 266; see 2 MICH. L. REV. 403. Some of the states which hold to the reasonable use doctrine do so from the necessity of conditions. In many parts of California if one put down a well and appropriated the subterranean percolating waters that would otherwise have reached another's land he would thereby render that land valueless. A respectable number of courts, however, apply the reasonable use rule where conditions do not make it a necessity.

WILLS—EXECUTION—COMPETENCY OF EXECUTOR AS WITNESS.—Subscribing witness was an executor of the will and a trustee and officer in the church to which a portion of the income and ultimately a part of the corpus of the estate was by said will directed to go. He likewise held an option to buy certain stock in a corporation, which stock was part of the trust fund created for said charitable use. He was one of two trustees to whom same stock was given in trust to vote at corporate elections, and a part of his duty as such was to pay dividends received thereon to the charity named. He was likewise a stockholder and director, as well as an officer and employee, in aforesaid corporation. *Held,* that he had such an interest as to disqualify him as a witness to the will, under the provisions of Act of April 26, 1855 (P. L. 332, § 11), requiring that a will containing a bequest to charity be "attested by two credible and at the time disinterested witnesses." *In re Kessler's Estate* (*Appeal of Stewart et al.*) (1908), — Pa. St. —, 70 Atl. 770.

Although in the earlier cases on this subject decided in Pennsylvania there was some conflict, the law has long been settled in this state and contrary to this holding. *Snyder* v. *Bull* (1851), 17 Pa. St. 54 (5 Harris), decided before the passage of Act supra; *Combs'* and *Hankinson's Appeal,* 105 Pa. St. 155; *In re Jordan's Estate* (1894), 161 Pa. St. 393, 29 Atl. 3; *Appeal of Bear,* Id. This decision is interesting, however, not because it will at once change the settled rule in Pennsylvania and in the majority of the other states that an executor has not such an interest as to disqualify him as a subscribing or attesting witness to the will wherein he is so nominated, but rather because of the court's refusal to be governed by the theory on which most of the previous decisions on the subject have been predicated. It has been held that one appointed executor by a will is not a competent subscribing witness to it on the ground that he is interested. ROOD, WILLS, § 314, and cases there cited. But, as Mr. Rood points out, the weight of authority is contrary to this view. The theory of these latter cases, in most instances decided under a statute similar to the Pennsylvania act, is that an interest such as to disqualify must be present, certain and vested, not an uncertain, remote or contingent interest,—in short, the executor can only be disqualified by having a substantial legal interest. To follow this theory, practically the test usually